

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALVARO ARCINIEGA,

Defendant.

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8:07CR137

ORDER

Defendant has filed a motion [21] for the issuance of a Subpoena Duces Tecum directing Custodian of Records for the Omaha Police Department to provide

any and all information regarding traffic citations issued by Officer Michael Bossman, #1714, relating to traffic citations issued between January from 2002 to present for violations of Neb. Rev. Stat. § 60-6,256. Such information is to include, but is not limited to, copies of the citations issued, and Officer Bossman's written reports concerning the same, and whether the citations issued were the result of Officer Bossman's cooperation with any other investigations.

The court finds that this motion should be denied because the defendant has not complied with the requirements of NECrimR 17.2(b), a copy of which is attached to this order.

**IT IS ORDERED** that defendant's Motion for the issuance of a Subpoena Duces Tecum [21] is denied.

Pursuant to NECrimR 57.2, a party may appeal this order by filing a "Statement of Appeal of Magistrate Judge's Order" within ten (10) business days after being served with the order. The party shall specifically state the order or portion thereof appealed from and the basis of the appeal. The appealing party shall file contemporaneously with the statement of appeal a brief setting forth the party's arguments that the magistrate judge's order is clearly erroneous or contrary to law. **The filing of a statement of appeal does not automatically stay the magistrate judge's order pending appeal.** See NECrimR 57.2(d).

**DATED July 18, 2007.**

**BY THE COURT:**

**s/ F.A. Gossett  
United States Magistrate Judge**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**CRIMINAL RULES**

**17.2 Subpoenas for Document Production.**

- (a) **General.** No subpoena in a criminal case may require the production of books, papers, documents or other objects at a date, time or place other than the date, time, and place of the trial, hearing, or proceeding at which these items are to be offered in evidence, unless the court has entered an order under Federal Rule of Criminal Procedure 17(c) authorizing the issuance of the subpoena.
- (b) **Motions for Pre-Proceeding Document Production.** Motions for the issuance of a subpoena to produce documents prior to any trial or evidentiary proceeding under Federal Rule of Criminal Procedure 17(c) shall be made to the magistrate judge assigned to the case when the motion is filed.

  - (1) **Content; Supporting Brief; Affidavit.** Except in the extraordinary case where ex parte consideration may be justified, the motion for issuance of the subpoena shall be served on counsel for the adverse party and the requirements of Nebraska Criminal Rule 12.3(b)(3) shall apply to such motions. In addition, motions seeking subpoenas duces tecum under this subsection shall be supported by an affidavit or declaration (see 28 U.S.C. § 1746) establishing that:

    - (A) The documents or objects sought cannot otherwise be reasonably obtained in advance of the trial or evidentiary proceeding by exercise of due diligence;
    - (B) The moving party cannot properly prepare for the trial or evidentiary proceeding without such production and inspection in advance;
    - (C) The failure to obtain advance production and inspection of the documents or objects may unreasonably delay the proceeding; and
    - (D) The application is made in good faith and is not intended for the purpose of general discovery.
  - (2) **Ruling.** The magistrate judge shall make a preliminary determination of whether the material sought is probably relevant and probably admissible. The magistrate judge shall also determine if the request is specific enough to be intelligently evaluated and may place limits on the scope of the requested document production.
  - (3) **Return of Service.**

    - (A) **Return; Inventory.** Any subpoena duces tecum issued under this rule shall be returned to the magistrate judge who authorized the subpoena, and shall be accompanied by an inventory which lists all items or documents produced. The return and the inventory shall be filed with the clerk.
    - (B) **Possession of Produced Documents or Items.** Absent a motion for protective order filed pursuant to subparagraph (3)(C) of this rule, the items produced shall be (i) provided to and kept in the possession of the attorney who sought the subpoena, or, (ii) in the case of a pro se defendant, filed with the clerk.
    - (C) **Motion for Protective Order.** Any party, the witness or entity responding to the subpoena, or any person or entity whose interests may be affected by disclosure of the subpoenaed documents may file a motion for protective order. The magistrate judge shall review the documents produced and issue any appropriate protective order regarding disclosure of the materials. Thereafter, the clerk shall maintain the items produced and make them available for inspection in accordance with the terms of the magistrate judge's order.